

The opinion in support of the decision being entered today was not written for publication in and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KIRT E. WHITESIDE

MAILED

DEC 15 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2006-1059
Application No. 09/780,603
Technology Center 3600

ON BRIEF

Before FRANKFORT, BAHR, and LEVY, *Administrative Patent Judges*.

FRANKFORT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 5. Claims 7 through 13 and 16 through 19, the only other claims remaining in the application, stand allowed. Claims 6, 14 and 15 have been cancelled.

Appellant's invention relates to mechanic's creepers and, more specifically, to a mechanic's creeper having improved

mobility due to a unique wheel design that decreases friction between the wheels and the work surface on which the creeper is used. Claim 1, the sole independent claim on appeal, is representative of the subject matter on appeal and a copy of that claim can be found in the Claims Appendix of appellant's brief.

The prior art references relied upon by the examiner in rejecting the appealed claims are:

Block	4,034,434	July 12, 1977
Bonzer et al. (Bonzer)	4,559,669	Dec. 24, 1985
Doyle et al. (Doyle)	4,707,880	Nov. 24, 1987
Miles et al. (Miles)	5,895,062	Apr. 20, 1999

Claims 1 through 3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miles in view of Bonzer and Block.

Claims 4 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miles in view of Bonzer and Block, as applied above, and further in view of Doyle.

Rather than reiterate the examiner's statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the answer (mailed April 20, 2005) for the examiner's reasoning in support of the rejections, and to

appellant's brief (filed February 2, 2005) and reply brief (filed June 10, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the obviousness rejections put forth by the examiner will not be sustained. Our reasons follow.

Appellant's principal argument is that the combination of Miles, Bonzer and Block applied by the examiner against claims 1 through 3 does not teach or suggest a creeper including wheels having a wheel body with a hemispherical or semi-elliptical cross-section wherein the wheel body is formed of a material having a hardness ranging from about 65 to 85 on the Shore D durometer scale, thereby providing a hardness level such that, when used on a work surface, the shape of said wheel body remains substantially unchanged. We agree with appellant.

Miles teaches a foldable mechanic's creeper having the basic structure set forth in claim 1 on appeal including a plurality of casters (8-11) affixed to the frame of the creeper, with each of said casters including a wheel. However, as recognized by the examiner, Miles does not disclose wheels of the particular configuration claimed or formed of a material having a hardness level like that set forth in the claims on appeal.

Bonzer addresses a shock resistant caster for use in moving highly sensitive pieces of equipment, such as a delicate computer or other similar electronic or electrical device (col. 1, lines 34-39). Each of the casters in Bonzer includes a cushioning block (19) that resists deflection of the movable wheel carrying part (17) and a wheel (18) for engaging a floor surface (12). As can be seen in Figure 2, the wheel (18) has an annular peripheral tire portion (69) formed of a resiliently deformable elastomeric material, e.g., neoprene rubber, and an inner core portion (80) formed of a rigid material containing and bonded to a rigid tubular bearing element (45). See column 3, lines 47-53 of Bonzer. In column 5, lines 15-17, it is noted that the material of the cushioning block (19) is desirably "substantially harder than the material of portion 69 of the

wheel." Bonzer goes on to note (col. 5, lines 24-27) that the Shore hardness of wheel portion (69) is preferably between about 50 and 70 on the A scale, while the hardness of cushion block (19) is preferably between about 70 and 95 on the A scale. The examiner has taken the position that Bonzer discloses a caster wheel body (Fig. 2) having a hemispherical or semi-elliptical cross-section.

The examiner has further urged that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to provide the creeper of Miles with the caster assembly of Bonzer, and appellant has not challenged that combination with any reasonable degree of specificity. The examiner then recognizes that such a combination of Miles and Bonzer still does not address appellant's claim 1 requirement regarding the hardness of the wheel body, and turns to Block for such a teaching (answer, page 4).

Block discloses a roller-type dust seal (40) on the rear of a dust receiving bin (22) of a brush-type sweeper (10). As noted in column 2, lines 54-57, and shown in Figures 2 and 3, the roller seal (40) includes a plurality of hollow, generally cylindrical roller segments (42) rotatably supported in an

abutting relationship on a transversely extending axle (44). As noted in column 3, lines 33+, each roller segment is formed in two concentric portions, a soft outer portion (64) and a hard inner portion (66), which portions provide a relatively hard, friction reducing surface at each roller segment's inner periphery contacting the base (46) of axle (44) and a relatively soft surface at its outer periphery that increases frictional contact between the roller and the surface to be cleaned so as to ensure rolling action of each segment of the dust seal when polished floors are swept. Block goes on to note that the inner core portion (66) is formed of a rigid vinyl material having a Shore D hardness of 65-75, while the outer portion (64) is formed of a softer vinyl material having a Shore A hardness of 40-50 (col. 3, lines 64-68).

From the teachings of Block, the examiner contends that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to have designed the wheel assemblies on the creeper of Miles, as modified by Bonzer, with a hardness of 65-75 Shore D, as taught by Block, in order to prevent wear.

For the reasons set forth on pages 6-8 of the brief and in the reply brief, we agree with appellant that the patents to Miles, Bonzer and Block, whether considered individually or collectively, do not teach or suggest a creeper assembly like that defined in claim 1 on appeal. Miles makes no comment concerning the construction of the caster wheels therein. Both Bonzer and Block teach having wheels or rollers that have a soft, resiliently deformable outer portion and a rigid inner portion. Nothing in the applied prior art teaches a caster wheel having a wheel body with a floor contacting portion having a hemispherical or semi-elliptical cross-section wherein the wheel body is formed of a material having a hardness ranging from about 65 to 85 on the Shore D scale, thereby providing a hardness level such that, when used on a work surface, the shape of said wheel body remains substantially unchanged, as required in appellant's claim 1.

For the above reasons, we find that the examiner has failed to establish a *prima facie* case of obviousness. Thus, the rejection of claims 1 through 3 under 35 U.S.C. 103(a) will not be sustained.

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As for the rejection of claims 4 and 5 under 35 U.S.C. 103(a) based on Miles in view of Bonzer and Block, taken further in view of Doyle, we agree with appellant's assessment set forth in the brief (pages 8-9). Simply stated, there is nothing in Doyle that provides for or otherwise overcomes the deficiencies noted above in the basic combination to Miles, Bonzer and Block. Thus, we will not sustain the examiner's rejection of dependent claims 4 and 5 under 35 U.S.C. § 103(a).

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Since we have refused to sustain either of the rejections on appeal, it follows that the decision of the examiner is reversed.

REVERSED

Charles E. Frankfort

CHARLES E. FRANKFORT)
Administrative Patent Judge)
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Jennifer D. Bahr

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Administrative Patent Judge) APPEALS
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